

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc.)	
a Massachusetts Corporation)	
)	
Plaintiff.)	
)	
v.)	Civil No. 04-12457 PBS
)	
Arthrex, Inc.)	
a Delaware Corporation, and)	
)	
Pearsalls Ltd.)	
a Private Limited Company)	
of the United Kingdom)	
)	
Defendants.)	

Plaintiff DePuy Mitek's Motion *In Limine* (No. 2) to Preclude Arthrex from Presenting Evidence that Mitek Performed Pre-Suit Testing on Coated vs. Uncoated FiberWire

Plaintiff, DePuy Mitek (“Mitek”) moves the Court to preclude Defendants Arthrex, Inc. and Pearsalls, Ltd. (collectively, “Arthrex”) from presenting evidence of Mitek’s privileged, work product pre-suit testing on coated vs. uncoated FiberWire sutures. Arthrex has already mentioned that Mitek performed pre-suit testing and failed to produce the results, implying that the results were favorable to Arthrex. But Arthrex’s counsel fails to mention that the samples were processed in a way in which the coating was not the only difference between the sutures. Arthrex’s attempt to create an “adverse inference” is: (1) contrary to the policies behind the attorney-client privilege and/or work product doctrine; (2) completely irrelevant to the sole triable issue of infringement; and (3) unfairly prejudicial to Mitek. Mitek requests that the Court preclude Arthrex from submitting any evidence or making any argument that Mitek performed pre-suit testing on coated and uncoated FiberWire per FED. R. EVID. 402 and 403.

Dated: July 13, 2007

DEPUY MITEK, INC.,
By its attorneys,

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